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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SEANDEE GAYDEN, an individual, on
behalf of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

FEDEX FREIGHT, INC., a Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 2:23-cv-06560-MCS-AS

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. UNFAIR COMPETITION IN
VIOLATION OF CAL. BUS. & PROF.
CODE §§ 17200, *et seq.*;
2. FAILURE TO PAY MINIMUM WAGES
IN VIOLATION OF CAL. LAB. CODE §§
1194, 1197 & 1197.1;
3. FAILURE TO PAY OVERTIME
WAGES IN VIOLATION OF CAL. LAB.
CODE § 510;
4. FAILURE TO PROVIDE REQUIRED
MEAL PERIODS IN VIOLATION OF
CAL. LAB. CODE §§ 226.7 & 512 AND
THE APPLICABLE IWC WAGE ORDER;
5. FAILURE TO PROVIDE REQUIRED
REST PERIODS IN VIOLATION OF CAL.
LAB. CODE §§ 226.7 & 512 AND THE
APPLICABLE IWC WAGE ORDER;
6. FAILURE TO PROVIDE ACCURATE
ITEMIZED STATEMENTS IN
VIOLATION OF CAL. LAB. CODE § 226;
7. FAILURE TO REIMBURSE
EMPLOYEES FOR REQUIRED
EXPENSES IN VIOLATION OF CAL.
LAB. CODE § 2802;
8. FAILURE TO PROVIDE WAGES
WHEN DUE IN VIOLATION OF CAL.
LAB. CODE §§ 201, 202 AND 203;
9. FAILURE TO PAY SICK PAY WAGES
IN VIOLATION OF CAL. LAB CODE
§§201-204, 233, 246;
10. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY; and
11. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698, *et seq.*]

DEMAND FOR A JURY TRIAL

1 Plaintiff Seandee Gayden (“PLAINTIFF”), an individual, on behalf of herself and
2 all other similarly situated current and former employees alleges on information and
3 belief, except for her own acts and knowledge which are based on personal knowledge,
4 the following.

5
6 **THE PARTIES**

7 1. Defendant FedEx Freight, Inc. (“DEFENDANT”) is a corporation that at
8 all relevant times mentioned herein conducted and continues to conduct substantial
9 business in the state of California.

10 2. DEFENDANT owns and operates a shipping company in Gardena,
11 California.

12 3. PLAINTIFF was employed by DEFENDANT in California from October
13 29, 2018 to May 20, 2022. She was at all times classified by DEFENDANT as a non-
14 exempt employee, paid on an hourly basis, and entitled to the legally required meal and
15 rest periods and payment of minimum and overtime wages due for all time worked.

16 4. PLAINTIFF brings this Class Action on behalf of herself and a California
17 class, defined as all individuals who are or previously were employed by DEFENDANT
18 in California as Freight Handlers, including any employees staffed with DEFENDANT
19 by a third party, and classified as non-exempt employees (the “CALIFORNIA CLASS”)
20 at any time during the period beginning May 23, 2019 and ending on the date as
21 determined by the Court (the “CALIFORNIA CLASS PERIOD”). The amount in
22 controversy for the aggregate claim of CALIFORNIA CLASS Members is under five
23 million dollars (\$5,000,000.00).

24 5. PLAINTIFF brings this Class Action on behalf of herself and a
25 CALIFORNIA CLASS in order to fully compensate the CALIFORNIA CLASS for
26 their losses incurred during the CALIFORNIA CLASS PERIOD caused by
27 DEFENDANT’s policy and practice which failed to lawfully compensate these
28 employees. DEFENDANT’s policy and practice alleged herein was an unlawful,

1 unfair and deceptive business practice whereby DEFENDANT retained and continues
2 to retain wages due PLAINTIFF and the other members of the CALIFORNIA
3 CLASS. PLAINTIFF and the other members of the CALIFORNIA CLASS seek an
4 injunction enjoining such conduct by DEFENDANT in the future, relief for the
5 named PLAINTIFF and the other members of the CALIFORNIA CLASS who have
6 been economically injured by DEFENDANT's past and current unlawful conduct,
7 and all other appropriate legal and equitable relief.

8 6. The true names and capacities, whether individual, corporate, subsidiary,
9 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
10 presently unknown to PLAINTIFF who therefore sues these Defendants by such
11 fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave
12 to amend this Complaint to allege the true names and capacities of Does 1 through 50,
13 inclusive, when they are ascertained. PLAINTIFF is informed and believes, and
14 based upon that information and belief alleges, that the Defendants named in this
15 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner
16 for one or more of the events and happenings that proximately caused the injuries and
17 damages hereinafter alleged.

18 7. The agents, servants and/or employees of the Defendants and each of
19 them acting on behalf of the Defendants acted within the course and scope of his, her
20 or its authority as the agent, servant and/or employee of the Defendants, and
21 personally participated in the conduct alleged herein on behalf of the Defendants with
22 respect to the conduct alleged herein. Consequently, the acts of each Defendant are
23 legally attributable to the other Defendants and all Defendants are jointly and
24 severally liable to PLAINTIFF and the other members of the CALIFORNIA CLASS,
25 for the loss sustained as a proximate result of the conduct of the Defendants' agents,
26 servants and/or employees.

THE CONDUCT

8. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and CALIFORNIA CLASS Members for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and CALIFORNIA CLASS Members to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT required PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and CALIFORNIA CLASS Members, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFF and CALIFORNIA CLASS Members are paid less than they would have been paid had they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and CALIFORNIA CLASS Members to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFF and other CALIFORNIA CLASS Members forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other CALIFORNIA CLASS Members for all time worked, is evidenced by DEFENDANT's business records.

1 9. State and federal law provides that employees must be paid overtime and
2 meal and rest break premiums at one-and-one-half times their “regular rate of pay.”
3 PLAINTIFF and other CALIFORNIA CLASS Members are compensated at an
4 hourly rate plus incentive pay that is tied to specific elements of an employee’s
5 performance.

6 10. The second component of PLAINTIFF’s and other CALIFORNIA
7 CLASS Members’ compensation is DEFENDANT’s non-discretionary incentive
8 program that paid PLAINTIFF and other CALIFORNIA CLASS Members incentive
9 wages based on their performance for DEFENDANT. The non-discretionary
10 incentive program provided all employees paid on an hourly basis with incentive
11 compensation when the employees met the various performance goals set by
12 DEFENDANT. However, when calculating the regular rate of pay in order to pay
13 overtime and meal and rest break premiums to PLAINTIFF and other CALIFORNIA
14 CLASS Members, DEFENDANT failed to include the incentive compensation as part
15 of the employees’ “regular rate of pay” for purposes of calculating overtime pay and
16 meal and rest break premium pay. Management and supervisors described the
17 incentive program to potential and new employees as part of the compensation
18 package. As a matter of law, the incentive compensation received by PLAINTIFF
19 and other CALIFORNIA CLASS Members must be included in the “regular rate of
20 pay.” The failure to do so has resulted in a underpayment of overtime compensation
21 and meal and rest break premiums to PLAINTIFF and other CALIFORNIA CLASS
22 Members by DEFENDANT.

23 11. As a result of their rigorous work schedules, PLAINTIFF and other
24 CALIFORNIA CLASS Members were from time to time unable to take thirty (30)
25 minute off duty meal breaks and were not fully relieved of duty for their meal
26 periods. PLAINTIFF and other CALIFORNIA CLASS Members were required from
27 time to time to perform work as ordered by DEFENDANT for more than five (5)
28 hours during some shifts without receiving a meal break. Further, DEFENDANT

1 from time to time failed to provide PLAINTIFF and CALIFORNIA CLASS
2 Members with a second off-duty meal period for some workdays in which these
3 employees were required by DEFENDANT to work ten (10) hours of work.
4 DEFENDANT also engaged in the practice of rounding the meal period times to
5 avoid paying penalties to PLAINTIFF and other CALIFORNIA CLASS Members.
6 PLAINTIFF and other members of the CALIFORNIA CLASS therefore forfeit meal
7 breaks without additional compensation and in accordance with DEFENDANT's
8 corporate policy and practice.

9 12. During the CALIFORNIA CLASS PERIOD, PLAINTIFF and other
10 CALIFORNIA CLASS Members were also required from time to time to work in
11 excess of four (4) hours without being provided ten (10) minute rest periods. Further,
12 these employees were denied their first rest periods of at least ten (10) minutes for
13 some shifts worked of at least two (2) to four (4) hours from time to time, a first and
14 second rest period of at least ten (10) minutes for some shifts worked of between six
15 (6) and eight (8) hours from time to time, and a first, second and third rest period of at
16 least ten (10) minutes for some shifts worked of ten (10) hours or more from time to
17 time. PLAINTIFF and other CALIFORNIA CLASS Members were also not
18 provided with one hour wages in lieu thereof. Additionally, the applicable California
19 Wage Order requires employers to provide employees with off-duty rest periods,
20 which the California Supreme Court defined as time during which an employee is
21 relieved from all work related duties and free from employer control. In so doing, the
22 Court held that the requirement under California law that employers authorize and
23 permit all employees to take rest period means that employers must relieve employees
24 of all duties and relinquish control over how employees spend their time which
25 includes control over the locations where employees may take their rest period.
26 Employers cannot impose controls that prohibit an employee from taking a brief walk
27 - five minutes out, five minutes back. Here, DEFENDANT's policy restricted
28 PLAINTIFF and other CALIFORNIA CLASS Members from unconstrained walks

1 and is unlawful based on DEFENDANT's rule which states PLAINTIFF and other
2 CALIFORNIA CLASS Members cannot leave the work premises during their rest
3 period.

4 13. During the CALIFORNIA CLASS PERIOD, DEFENDANT failed to
5 accurately record and pay PLAINTIFF and other CALIFORNIA CLASS Members
6 for the actual amount of time these employees worked. Pursuant to the Industrial
7 Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF
8 and other CALIFORNIA CLASS Members for all time worked, meaning the time
9 during which an employee was subject to the control of an employer, including all the
10 time the employee was permitted or suffered to permit this work. DEFENDANT
11 required these employees to work off the clock without paying them for all the time
12 they were under DEFENDANT's control. As such, DEFENDANT knew or should
13 have known that PLAINTIFF and the other members of the CALIFORNIA CLASS
14 were under compensated for all time worked. As a result, PLAINTIFF and other
15 CALIFORNIA CLASS Members forfeited time worked by working without their
16 time being accurately recorded and without compensation at the applicable minimum
17 wage and overtime wage rates. To the extent that the time worked off the clock does
18 not qualify for overtime premium payment, DEFENDANT fails to pay minimum
19 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
20 1197, and 1197.1.

21 14. From time to time, DEFENDANT also failed to provide PLAINTIFF
22 and the other members of the CALIFORNIA CLASS with complete and accurate
23 wage statements which failed to show, among other things, the correct gross and net
24 wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each
25 of his or her employees with an accurate itemized wage statement in writing showing,
26 among other things, gross wages earned and all applicable hourly rates in effect
27 during the pay period and the corresponding amount of time worked at each hourly
28 rate. PLAINTIFF and CALIFORNIA CLASS Members were paid on an hourly

1 basis. As such, the wage statements should reflect all applicable hourly rates during
2 the pay period and the total hours worked, and the applicable pay period in which the
3 wages were earned pursuant to California Labor Code Section 226(a). The wage
4 statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA CLASS
5 Members failed to identify such information. More specifically, the wage statements
6 failed to identify the accurate total hours worked each pay period. When the hours
7 shown on the wage statements were added up, they did not equal the actual total
8 hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside,
9 from the violations listed above in this paragraph, DEFENDANT failed to issue to
10 PLAINTIFF an itemized wage statement that lists all the requirements under
11 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time
12 provided PLAINTIFF and the other members of the CALIFORNIA CLASS with
13 wage statements which violated Cal. Lab. Code § 226.

14 15. Cal. Lab. Code § 204(d) provides, the requirements of this section shall
15 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly
16 payroll if the wages are paid not more than seven (7) calendar days following the
17 close of the payroll period. Cal. Lab. Code § 210 provides:

18 [I]n addition to, and entirely independent and apart from, any other penalty
19 provided in this article, every person who fails to pay the wages of each
20 employee as provided in Sections. . . .204. . . shall be subject to a civil penalty
21 as follows: (1) For any initial violation, one hundred dollars (\$100) for each
22 failure to pay each employee; (2) For each subsequent violation, or any willful
23 or intentional violation, two hundred dollars (\$200) for each failure to pay each
24 employee, plus 25 percent of the amount unlawfully withheld.

25 16. DEFENDANT from time to time failed to pay PLAINTIFF and
26 members of the CALIFORNIA LABOR SUB-CLASS Members within seven (7)
27 days of the close of the payroll period in accordance with Cal. Lab. Code § 204(d),
28 including but not limited to for the “Hourly” regular wage payments.

17 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
18 CALIFORNIA CLASS Members by failing to pay such wages at the regular rate of
19 pay in violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFF and other
20

1 non-exempt employees earn non-discretionary remuneration. Rather than pay sick
2 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and
3 other CALIFORNIA CLASS Members at their base rates of pay.

4 18. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for
5 nonexempt employees be calculated by dividing the employee's total wages, not
6 including overtime premium pay, by the employee's total hours worked in the full
7 pay periods of the prior 90 days of employment.

8 19. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay
9 sick pay at the regular rate of pay. PLAINTIFF and CALIFORNIA CLASS Members
10 routinely earned non-discretionary incentive wages which increased their regular rate
11 of pay. However, when sick pay was paid, it was paid at the base rate of pay for
12 PLAINTIFF and members of the CALIFORNIA CLASS, as opposed to the correct,
13 higher regular rate of pay, as required under Cal. Lab. Code Section 246.

14 20. As a pattern and practice, DEFENDANT regularly failed to pay
15 PLAINTIFF and other members of the CALIFORNIA CLASS their correct wages
16 and accordingly owe waiting time penalties pursuant to Cal. Lab. Code Section 203.
17 Further, PLAINTIFF is informed and believes and based thereon alleges that such
18 failure to pay sick pay at regular rate was willful, such that PLAINTIFF and members
19 of the CALIFORNIA CLASS whose employment has separated are entitled to
20 waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

21 21. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any
22 employer to collect or receive from an employee any part of wages theretofore paid
23 by said employer to said employee." DEFENDANT failed to pay all compensation
24 due to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members, made
25 unlawful deductions from compensation payable to PLAINTIFF and CALIFORNIA
26 LABOR SUB-CLASS Members, failed to disclose all aspects of the deductions from
27 compensation payable to PLAINTIFF and CALIFORNIA LABOR SUB-CLASS
28 Members, and thereby failed to pay these employees all wages due at each applicable

1 pay period and upon termination. PLAINTIFF and members of the CALIFORNIA
2 LABOR SUB-CLASS seek recovery of all illegal deductions from wages according
3 to proof, related penalties, interest, attorney fees and costs.

4 22. DEFENDANT intentionally and knowingly failed to reimburse and
5 indemnify PLAINTIFF and the other CALIFORNIA CLASS Members for required
6 business expenses incurred by the PLAINTIFF and other CALIFORNIA CLASS
7 Members in direct consequence of discharging their duties on behalf of
8 DEFENDANT. Under California Labor Code Section 2802, employers are required
9 to indemnify employees for all expenses incurred in the course and scope of their
10 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
11 indemnify his or her employee for all necessary expenditures or losses incurred by the
12 employee in direct consequence of the discharge of his or her duties, or of his or her
13 obedience to the directions of the employer, even though unlawful, unless the
14 employee, at the time of obeying the directions, believed them to be unlawful."

15 23. In the course of their employment PLAINTIFF and other CALIFORNIA
16 CLASS Members as a business expense, were required by DEFENDANT to use their
17 own personal cellular phones as a result of and in furtherance of their job duties as
18 employees for DEFENDANT but are not reimbursed or indemnified by
19 DEFENDANT for the cost associated with the use of their personal cellular phones
20 for DEFENDANT's benefit. Specifically, PLAINTIFF and other CALIFORNIA
21 CLASS Members were required by DEFENDANT to use their personal cellular
22 phones. As a result, in the course of their employment with DEFENDANT,
23 PLAINTIFF and other members of the CALIFORNIA CLASS incurred unreimbursed
24 business expenses which included, but were not limited to, costs related to the use of
25 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

26 24. In violation of the applicable sections of the California Labor Code and
27 the requirements of the applicable Industrial Welfare Commission ("IWC") Wage
28 Order, DEFENDANT as a matter of company policy, practice and procedure,

1 intentionally, knowingly and systematically failed to provide PLAINTIFF and the
2 other Aggrieved Employees suitable seating when the nature of these employees'
3 work reasonably permitted sitting.

4 25. DEFENDANT knew or should have known that PLAINTIFF and other
5 Aggrieved Employees were entitled to suitable seating and/or were entitled to sit
6 when it did not interfere with the performance of their duties, and that DEFENDANT
7 did not provide suitable seating and/or did not allow them to sit when it did not
8 interfere with the performance of their duties.

9 26. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
10 Employees, DEFENDANT violated California Labor Code Section 1198 and
11 California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide
12 Seating), Wage Order 4-2001, Section 14 by failing to provide suitable seats.
13 PLAINTIFF seeks penalties on behalf of PLAINTIFF and other Aggrieved
14 Employees as provided herein. Providing suitable seating is the DEFENDANT's
15 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
16 this burden, DEFENDANT violated the California Labor Code and regulations
17 promulgated thereunder as herein alleged.

18 27. Specifically as to PLAINTIFF, DEFENDANT failed to provide all the
19 legally required off-duty meal and rest breaks to PLAINTIFF as required by the
20 applicable Wage Order and Labor Code and failed to pay PLAINTIFF all minimum
21 and overtime wages due to PLAINTIFF. DEFENDANT did not have a policy or
22 practice which provided timely off-duty meal and rest breaks to PLAINTIFF and also
23 failed to compensate PLAINTIFF for PLAINTIFF's missed meal and rest breaks. The
24 nature of the work performed by the PLAINTIFF did not prevent PLAINTIFF from
25 being relieved of all of PLAINTIFF's duties for the legally required off-duty meal
26 periods. As a result, DEFENDANT's failure to provide PLAINTIFF with the legally
27 required meal periods is evidenced by DEFENDANT's business records.

28 28. In March of 2022, and continuing throughout the rest of PLAINTIFF's

1 employment, PLAINTIFF engaged in protected activity by filing a complaint to the
2 Occupational Health and Safety Administration regarding DEFENDANT's illegal
3 employment practices, including, but not limited to, DEFENDANT'S failure to
4 follow proper medical guidelines for PLAINTIFF'S employment and improper
5 training of employees.

6 29. Subsequent to PLAINTIFF's participation in protective activity by filing
7 a complaint to the Occupational Health and Safety Administration about
8 DEFENDANT's unlawful employment practices, DEFENDANT subjected
9 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF.
10 Specifically, after PLAINTIFF filed a claim with the Occupational Health and Safety
11 Administration in March of 2022, DEFENDANT terminated PLAINTIFF's
12 employment with DEFENDANT in May of 2022.

13 14 **JURISDICTION AND VENUE**

15 30. This Court has jurisdiction over this Action pursuant to California Code
16 of Civil Procedure, Section 410.10 and California Business & Professions Code,
17 Section 17203. This action is brought as a Class Action on behalf of PLAINTIFF and
18 similarly situated employees of DEFENDANT pursuant to Cal. Code of Civ. Proc. §
19 382.

20 31. Venue is proper in this Court pursuant to California Code of Civil
21 Procedure, Sections 395 and 395.5, because PLAINTIFF worked in this County for
22 DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times
23 maintained offices and facilities in this County and/or conducts substantial business
24 in this County, and (ii) committed the wrongful conduct herein alleged in this County
25 against members of the CALIFORNIA CLASS.

26 27 28 **THE CALIFORNIA CLASS**

1 32. PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and
2 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200, *et seq.*
3 (the "UCL") as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf
4 of a California class, defined as all individuals who are or previously were employed
5 by DEFENDANT in California as Freight Handlers, including any employees staffed
6 with DEFENDANT by a third party, and classified as non-exempt employees (the
7 "CALIFORNIA CLASS") at any time during the period beginning May 23, 2019 and
8 ending on the date as determined by the Court (the "CALIFORNIA CLASS
9 PERIOD"). The amount in controversy for the aggregate claim of CALIFORNIA
10 CLASS Members is under five million dollars (\$5,000,000.00).

11 33. To the extent equitable tolling operates to toll claims by the
12 CALIFORNIA CLASS against DEFENDANT, the CALIFORNIA CLASS PERIOD
13 should be adjusted accordingly.

14 34. DEFENDANT, as a matter of company policy, practice and procedure,
15 and in violation of the applicable Labor Code, Industrial Welfare Commission
16 ("IWC") Wage Order requirements, and the applicable provisions of California law,
17 intentionally, knowingly, and wilfully, engaged in a practice whereby DEFENDANT
18 failed to record all meal and rest breaks missed by PLAINTIFF and other
19 CALIFORNIA CLASS Members, even though DEFENDANT enjoyed the benefit of
20 this work, required employees to perform this work and permits or suffers to permit
21 this work.

22 35. DEFENDANT has the legal burden to establish that each and every
23 CALIFORNIA CLASS Member was paid accurately for all meal and rest breaks
24 missed as required by California laws. The DEFENDANT, however, as a matter of
25 policy and procedure failed to have in place during the CALIFORNIA CLASS
26 PERIOD and still fails to have in place a policy or practice to ensure that each and
27 every CALIFORNIA CLASS Member is paid as required by law. This common
28

1 business practice is applicable to each and every CALIFORNIA CLASS Member can
2 be adjudicated on a class-wide basis as unlawful, unfair, and/or deceptive under Cal.
3 Business & Professions Code §§ 17200, *et seq.* (the “UCL”) as causation, damages,
4 and reliance are not elements of this claim.

5 36. The CALIFORNIA CLASS, is so numerous that joinder of all
6 CALIFORNIA CLASS Members is impracticable.

7 37. DEFENDANT violated the rights of the CALIFORNIA CLASS under
8 California law by:

- 9 (a) Committing an act of unfair competition in violation of , Cal. Bus.
10 & Prof. Code §§ 17200, *et seq.* (the "UCL"), by unlawfully,
11 unfairly and/or deceptively having in place company policies,
12 practices and procedures that failed to record and pay PLAINTIFF
13 and the other members of the CALIFORNIA CLASS for all time
14 worked, including minimum wages owed and overtime wages
15 owed for work performed by these employees; and,
16 (b) Committing an act of unfair competition in violation of the UCL,
17 by failing to provide the PLAINTIFF and the other members of
18 the CALIFORNIA CLASS with the legally required meal and rest
19 periods.

20 38. This Class Action meets the statutory prerequisites for the maintenance
21 of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 22 (a) The persons who comprise the CALIFORNIA CLASS are so
23 numerous that the joinder of all such persons is impracticable and
24 the disposition of their claims as a class will benefit the parties
25 and the Court;
26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
27 issues that are raised in this Complaint are common to the
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1 CALIFORNIA CLASS will apply to every member of the
2 CALIFORNIA CLASS;

3 (c) The claims of the representative PLAINTIFF are typical of the
4 claims of each member of the CALIFORNIA CLASS.
5 PLAINTIFF, like all the other members of the CALIFORNIA
6 CLASS, was classified as a non-exempt employee paid on an
7 hourly basis who was subjected to the DEFENDANT's deceptive
8 practice and policy which failed to provide the legally required
9 meal and rest periods to the CALIFORNIA CLASS and thereby
10 underpaid compensation to PLAINTIFF and CALIFORNIA
11 CLASS. PLAINTIFF sustained economic injury as a result of
12 DEFENDANT's employment practices. PLAINTIFF and the
13 members of the CALIFORNIA CLASS were and are similarly or
14 identically harmed by the same unlawful, deceptive and unfair
15 misconduct engaged in by DEFENDANT; and,

16 (d) The representative PLAINTIFF will fairly and adequately
17 represent and protect the interest of the CALIFORNIA CLASS,
18 and has retained counsel who are competent and experienced in
19 Class Action litigation. There are no material conflicts between
20 the claims of the representative PLAINTIFF and the members of
21 the CALIFORNIA CLASS that would make class certification
22 inappropriate. Counsel for the CALIFORNIA CLASS will
23 vigorously assert the claims of all CALIFORNIA CLASS
24 Members.

25 39. In addition to meeting the statutory prerequisites to a Class Action, this
26 action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. §
27 382, in that:
28

- 1 (a) Without class certification and determination of declaratory,
2 injunctive, statutory and other legal questions within the class
3 format, prosecution of separate actions by individual members of
4 the CALIFORNIA CLASS will create the risk of:
- 5 1) Inconsistent or varying adjudications with respect to
6 individual members of the CALIFORNIA CLASS which
7 would establish incompatible standards of conduct for the
8 parties opposing the CALIFORNIA CLASS; and/or,
9 2) Adjudication with respect to individual members of the
10 CALIFORNIA CLASS which would as a practical matter
11 be dispositive of interests of the other members not party to
12 the adjudication or substantially impair or impede their
13 ability to protect their interests.
- 14 (b) The parties opposing the CALIFORNIA CLASS have acted or
15 refused to act on grounds generally applicable to the
16 CALIFORNIA CLASS, making appropriate class-wide relief with
17 respect to the CALIFORNIA CLASS as a whole in that
18 DEFENDANT failed to pay all wages due to members of the
19 CALIFORNIA CLASS as required by law;
- 20 1) With respect to the First Cause of Action, the final relief on
21 behalf of the CALIFORNIA CLASS sought does not relate
22 exclusively to restitution because through this claim
23 PLAINTIFF seeks declaratory relief holding that the
24 DEFENDANT's policy and practices constitute unfair
25 competition, along with declaratory relief, injunctive relief,
26 and incidental equitable relief as may be necessary to
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1 prevent and remedy the conduct declared to constitute
2 unfair competition;

3 (c) Common questions of law and fact exist as to the members of the
4 CALIFORNIA CLASS, with respect to the practices and
5 violations of California law as listed above, and predominate over
6 any question affecting only individual CALIFORNIA CLASS
7 Members, and a Class Action is superior to other available
8 methods for the fair and efficient adjudication of the controversy,
9 including consideration of:

10 1) The interests of the members of the CALIFORNIA CLASS
11 in individually controlling the prosecution or defense of
12 separate actions in that the substantial expense of individual
13 actions will be avoided to recover the relatively small
14 amount of economic losses sustained by the individual
15 CALIFORNIA CLASS Members when compared to the
16 substantial expense and burden of individual prosecution of
17 this litigation;

18 2) Class certification will obviate the need for unduly
19 duplicative litigation that would create the risk of:

20 A. Inconsistent or varying adjudications with respect to
21 individual members of the CALIFORNIA CLASS,
22 which would establish incompatible standards of
23 conduct for the DEFENDANT; and/or,

24 B. Adjudications with respect to individual members of
25 the CALIFORNIA CLASS would as a practical
26 matter be dispositive of the interests of the other
27 members not parties to the adjudication or
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1 substantially impair or impede their ability to protect
2 their interests;

- 3 3) In the context of wage litigation because a substantial
4 number of individual CALIFORNIA CLASS Members will
5 avoid asserting their legal rights out of fear of retaliation by
6 DEFENDANT, which may adversely affect an individual's
7 job with DEFENDANT or with a subsequent employer, the
8 Class Action is the only means to assert their claims
9 through a representative; and,
10 4) A class action is superior to other available methods for the
11 fair and efficient adjudication of this litigation because class
12 treatment will obviate the need for unduly and unnecessary
13 duplicative litigation that is likely to result in the absence of
14 certification of this action pursuant to Cal. Code of Civ.
15 Proc. § 382.

16 40. This Court should permit this action to be maintained as a Class Action
17 pursuant to Cal. Code of Civ. Proc. § 382 because:

- 18 (a) The questions of law and fact common to the CALIFORNIA
19 CLASS predominate over any question affecting only individual
20 CALIFORNIA CLASS Members because the DEFENDANT's
21 employment practices are applied with respect to the
22 CALIFORNIA CLASS;
23 (b) A Class Action is superior to any other available method for the
24 fair and efficient adjudication of the claims of the members of the
25 CALIFORNIA CLASS because in the context of employment
26 litigation a substantial number of individual CALIFORNIA
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1 CLASS Members will avoid asserting their rights individually out
2 of fear of retaliation or adverse impact on their employment;

3 (c) The members of the CALIFORNIA CLASS are so numerous that
4 it is impractical to bring all members of the CALIFORNIA
5 CLASS before the Court;

6 (d) PLAINTIFF, and the other CALIFORNIA CLASS Members, will
7 not be able to obtain effective and economic legal redress unless
8 the action is maintained as a Class Action;

9 (e) There is a community of interest in obtaining appropriate legal
10 and equitable relief for the acts of unfair competition, statutory
11 violations and other improprieties, and in obtaining adequate
12 compensation for the damages and injuries which
13 DEFENDANT's actions have inflicted upon the CALIFORNIA
14 CLASS;

15 (f) There is a community of interest in ensuring that the combined
16 assets of DEFENDANT are sufficient to adequately compensate
17 the members of the CALIFORNIA CLASS for the injuries
18 sustained;

19 (g) DEFENDANT has acted or refused to act on grounds generally
20 applicable to the CALIFORNIA CLASS, thereby making final
21 class-wide relief appropriate with respect to the CALIFORNIA
22 CLASS as a whole;

23 (h) The members of the CALIFORNIA CLASS are readily
24 ascertainable from the business records of DEFENDANT; and,

25 (i) Class treatment provides manageable judicial treatment calculated
26 to bring a efficient and rapid conclusion to all litigation of all
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1 wage and hour related claims arising out of the conduct of
2 DEFENDANT as to the members of the CALIFORNIA CLASS.

3 41. DEFENDANT maintains records from which the Court can ascertain
4 and identify by job title each of DEFENDANT's employees who have been
5 intentionally subjected to DEFENDANT's company policy, practices and procedures
6 as herein alleged. PLAINTIFF will seek leave to amend the Complaint to include
7 any additional job titles of similarly situated employees when they have been
8 identified.

9
10 **THE CALIFORNIA LABOR SUB-CLASS**

11 42. PLAINTIFF further brings the Second, Third, Fourth, Fifth, Sixth,
12 Seventh, Eighth and Ninth causes Action on behalf of a California sub-class, defined
13 as all members of the CALIFORNIA CLASS who are or previously were employed
14 by DEFENDANT in California as Freight Handlers, including any employees staffed
15 with DEFENDANT by a third party, and classified as non exempt employees (the
16 "CALIFORNIA LABOR SUB-CLASS") at any time during the period of May 23,
17 2020 and ending on the date as determined by the Court (the "CALIFORNIA
18 LABOR SUB-CLASS PERIOD") pursuant to Cal. Code of Civ. Proc. § 382. The
19 amount in controversy for the aggregate claim of CALIFORNIA LABOR SUB-
20 CLASS Members is under five million dollars (\$5,000,000.00).

21 43. DEFENDANT, in violation of the applicable Labor Code, Industrial
22 Welfare Commission ("IWC") Wage Order requirements, and the applicable
23 provisions of California law, intentionally, knowingly, and wilfully, engaged in a
24 practice whereby DEFENDANT failed to correctly calculate compensation for the
25 time worked by PLAINTIFF and the other members of the CALIFORNIA LABOR
26 SUB-CLASS and reporting time wages owed to these employees, even though
27 DEFENDANT enjoyed the benefit of this work, required employees to perform this
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1 work and permitted or suffered to permit this work. DEFENDANT has denied these
2 CALIFORNIA LABOR SUB-CLASS Members wages to which these employees are
3 entitled in order to unfairly cheat the competition and unlawfully profit. To the
4 extent equitable tolling operates to toll claims by the CALIFORNIA LABOR SUB-
5 CLASS against DEFENDANT, the CALIFORNIA LABOR SUB-CLASS PERIOD
6 should be adjusted accordingly.

7 44. DEFENDANT maintains records from which the Court can ascertain
8 and identify by name and job title, each of DEFENDANT's employees who have
9 been intentionally subjected to DEFENDANT's company policy, practices and
10 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to
11 include any additional job titles of similarly situated employees when they have been
12 identified.

13 45. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder
14 of all CALIFORNIA LABOR SUB-CLASS Members is impracticable.

15 46. Common questions of law and fact exist as to members of the
16 CALIFORNIA LABOR SUB-CLASS, including, but not limited, to the following:

- 17 (a) Whether DEFENDANT unlawfully failed to correctly calculate
18 and pay compensation due to members of the CALIFORNIA
19 LABOR SUB-CLASS for missed meal and rest breaks in
20 violation of the California Labor Code and California regulations
21 and the applicable California Wage Order;
- 22 (b) Whether DEFENDANT failed to provide the PLAINTIFF and the
23 other members of the CALIFORNIA LABOR SUB-CLASS with
24 accurate itemized wage statements;
- 25 (c) Whether DEFENDANT has engaged in unfair competition by the
26 above-listed conduct;
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- 1 (d) The proper measure of damages and penalties owed to the
2 members of the CALIFORNIA LABOR SUB-CLASS; and,
3 (e) Whether DEFENDANT's conduct was willful.

4 47. DEFENDANT violated the rights of the CALIFORNIA LABOR SUB-
5 CLASS under California law by:

- 6 (a) Violating Cal. Lab. Code § 510, by failing to correctly pay the
7 PLAINTIFF and the members of the CALIFORNIA LABOR
8 SUB-CLASS all wages due for overtime worked, for which
9 DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;
10 (b) Violating Cal. Lab. Code §§ 1194, 1197 & 1197.1 *et seq.*, by
11 failing to accurately pay PLAINTIFF and the members of the
12 CALIFORNIA LABOR SUB-CLASS the correct minimum wage
13 pay for which DEFENDANT is liable pursuant to Cal. Lab. Code
14 §§ 1194 and 1197;
15 (c) Violating Cal. Lab. Code § 226, by failing to provide PLAINTIFF
16 and the members of the CALIFORNIA LABOR SUB-CLASS
17 with an accurate itemized statement in writing showing the
18 corresponding correct amount of wages earned by the employee;
19 (d) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
20 PLAINTIFF and the other members of the CALIFORNIA
21 LABOR SUB-CLASS with all legally required off-duty,
22 uninterrupted thirty (30) minute meal breaks and the legally
23 required off-duty rest breaks;
24 (e) Violating Cal. Lab. Code §§ 201, 202 and/or 203, which provides
25 that when an employee is discharged or quits from employment,
26 the employer must pay the employee all wages due without
27 abatement, by failing to tender full payment and/or restitution of
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1 wages owed or in the manner required by California law to the
2 members of the CALIFORNIA LABOR SUB-CLASS who have
3 terminated their employment; and,

- 4 (f) Violating Cal. Lab. Code § 2802 by failing to reimburse
5 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
6 members with necessary expenses incurred in the discharge of
7 their job duties.

8 48. This Class Action meets the statutory prerequisites for the maintenance
9 of a Class Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

- 10 (a) The persons who comprise the CALIFORNIA LABOR SUB-
11 CLASS are so numerous that the joinder of all CALIFORNIA
12 LABOR SUB-CLASS Members is impracticable and the
13 disposition of their claims as a class will benefit the parties and
14 the Court;
- 15 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
16 issues that are raised in this Complaint are common to the
17 CALIFORNIA LABOR SUB-CLASS and will apply to every
18 member of the CALIFORNIA LABOR SUB-CLASS;
- 19 (c) The claims of the representative PLAINTIFF are typical of the
20 claims of each member of the CALIFORNIA LABOR SUB-
21 CLASS. PLAINTIFF, like all the other members of the
22 CALIFORNIA LABOR SUB-CLASS, was a non-exempt
23 employee paid on an hourly basis who was subjected to the
24 DEFENDANT's practice and policy which failed to pay the
25 correct amount of wages due to the CALIFORNIA LABOR SUB-
26 CLASS. PLAINTIFF sustained economic injury as a result of
27 DEFENDANT's employment practices. PLAINTIFF and the
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1 members of the CALIFORNIA LABOR SUB-CLASS were and
2 are similarly or identically harmed by the same unlawful,
3 deceptive, and unfair misconduct engaged in by DEFENDANT;
4 and,

5 (d) The representative PLAINTIFF will fairly and adequately
6 represent and protect the interest of the CALIFORNIA LABOR
7 SUB-CLASS, and has retained counsel who are competent and
8 experienced in Class Action litigation. There are no material
9 conflicts between the claims of the representative PLAINTIFF
10 and the members of the CALIFORNIA LABOR SUB-CLASS that
11 would make class certification inappropriate. Counsel for the
12 CALIFORNIA LABOR SUB-CLASS will vigorously assert the
13 claims of all CALIFORNIA LABOR SUB-CLASS Members.

14 49. In addition to meeting the statutory prerequisites to a Class Action, this
15 action is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. §
16 382, in that:

- 17 (a) Without class certification and determination of declaratory,
18 injunctive, statutory and other legal questions within the class
19 format, prosecution of separate actions by individual members of
20 the CALIFORNIA LABOR SUB-CLASS will create the risk of:
- 21 1) Inconsistent or varying adjudications with respect to
22 individual members of the CALIFORNIA LABOR SUB-
23 CLASS which would establish incompatible standards of
24 conduct for the parties opposing the CALIFORNIA
25 LABOR SUB-CLASS; or,
 - 26 2) Adjudication with respect to individual members of the
27 CALIFORNIA LABOR SUB-CLASS which would as a
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1 practical matter be dispositive of interests of the other
2 members not party to the adjudication or substantially
3 impair or impede their ability to protect their interests.

4 (b) The parties opposing the CALIFORNIA LABOR SUB-CLASS
5 have acted or refused to act on grounds generally applicable to the
6 CALIFORNIA LABOR SUB-CLASS, making appropriate class-
7 wide relief with respect to the CALIFORNIA LABOR SUB-
8 CLASS as a whole in that DEFENDANT fails to pay all wages
9 due. Including the correct wages for all time worked by the
10 members of the CALIFORNIA LABOR SUB-CLASS as required
11 by law;

12 (c) Common questions of law and fact predominate as to the members
13 of the CALIFORNIA LABOR SUB-CLASS, with respect to the
14 practices and violations of California Law as listed above, and
15 predominate over any question affecting only individual
16 CALIFORNIA LABOR SUB-CLASS Members, and a Class
17 Action is superior to other available methods for the fair and
18 efficient adjudication of the controversy, including consideration
19 of:

20 1) The interests of the members of the CALIFORNIA LABOR
21 SUB-CLASS in individually controlling the prosecution or
22 defense of separate actions in that the substantial expense of
23 individual actions will be avoided to recover the relatively
24 small amount of economic losses sustained by the
25 individual CALIFORNIA LABOR SUB-CLASS Members
26 when compared to the substantial expense and burden of
27 individual prosecution of this litigation;
28

- 1 2) Class certification will obviate the need for unduly
2 duplicative litigation that would create the risk of:
- 3 A. Inconsistent or varying adjudications with respect to
4 individual members of the CALIFORNIA LABOR
5 SUB-CLASS, which would establish incompatible
6 standards of conduct for the DEFENDANT; and/or,
7 B. Adjudications with respect to individual members of
8 the CALIFORNIA LABOR SUB-CLASS would as a
9 practical matter be dispositive of the interests of the
10 other members not parties to the adjudication or
11 substantially impair or impede their ability to protect
12 their interests;
- 13 3) In the context of wage litigation because a substantial
14 number of individual CALIFORNIA LABOR SUB-CLASS
15 Members will avoid asserting their legal rights out of fear
16 of retaliation by DEFENDANT, which may adversely
17 affect an individual's job with DEFENDANT or with a
18 subsequent employer, the Class Action is the only means to
19 assert their claims through a representative; and,
- 20 4) A class action is superior to other available methods for the
21 fair and efficient adjudication of this litigation because class
22 treatment will obviate the need for unduly and unnecessary
23 duplicative litigation that is likely to result in the absence of
24 certification of this action pursuant to Cal. Code of Civ.
25 Proc. § 382.

26 50. This Court should permit this action to be maintained as a Class Action
27 pursuant to Cal. Code of Civ. Proc. § 382 because:
28

- 1 (a) The questions of law and fact common to the CALIFORNIA
2 LABOR SUB-CLASS predominate over any question affecting
3 only individual CALIFORNIA LABOR SUB-CLASS Members;
- 4 (b) A Class Action is superior to any other available method for the
5 fair and efficient adjudication of the claims of the members of the
6 CALIFORNIA LABOR SUB-CLASS because in the context of
7 employment litigation a substantial number of individual
8 CALIFORNIA LABOR SUB-CLASS Members will avoid
9 asserting their rights individually out of fear of retaliation or
10 adverse impact on their employment;
- 11 (c) The members of the CALIFORNIA LABOR SUB-CLASS are so
12 numerous that it is impractical to bring all members of the
13 CALIFORNIA LABOR SUB-CLASS before the Court;
- 14 (d) PLAINTIFF, and the other CALIFORNIA LABOR SUB-CLASS
15 Members, will not be able to obtain effective and economic legal
16 redress unless the action is maintained as a Class Action;
- 17 (e) There is a community of interest in obtaining appropriate legal
18 and equitable relief for the acts of unfair competition, statutory
19 violations and other improprieties, and in obtaining adequate
20 compensation for the damages and injuries which
21 DEFENDANT's actions have inflicted upon the CALIFORNIA
22 LABOR SUB-CLASS;
- 23 (f) There is a community of interest in ensuring that the combined
24 assets of DEFENDANT are sufficient to adequately compensate
25 the members of the CALIFORNIA LABOR SUB-CLASS for the
26 injuries sustained;
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- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA LABOR SUB-CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA LABOR SUB-CLASS as a whole;
- (h) The members of the CALIFORNIA LABOR SUB-CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA LABOR SUB-CLASS consists of all CALIFORNIA CLASS Members who worked for DEFENDANT in California at any time during the CALIFORNIA LABOR SUB-CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA LABOR SUB-CLASS.

FIRST CAUSE OF ACTION

For Unlawful Business Practices

[Cal. Bus. And Prof. Code §§ 17200, *et seq.*]

(By PLAINTIFF and the CALIFORNIA CLASS and Against All Defendants)

51. PLAINTIFF, and the other members of the CALIFORNIA CLASS, reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

52. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof. Code § 17021.

53. California Business & Professions Code §§ 17200, *et seq.* (the “UCL”) defines unfair competition as any unlawful, unfair, or fraudulent business act or

1 practice. Section 17203 authorizes injunctive, declaratory, and/or other equitable
2 relief with respect to unfair competition as follows:

3 Any person who engages, has engaged, or proposes to engage in unfair
4 competition may be enjoined in any court of competent jurisdiction. The
5 court may make such orders or judgments, including the appointment of
6 a receiver, as may be necessary to prevent the use or employment by any
7 person of any practice which constitutes unfair competition, as defined
8 in this chapter, or as may be necessary to restore to any person in interest
9 any money or property, real or personal, which may have been acquired
10 by means of such unfair competition.

11 Cal. Bus. & Prof. Code § 17203.

12 54. By the conduct alleged herein, DEFENDANT has engaged and
13 continues to engage in a business practice which violates California law, including
14 but not limited to, the applicable Industrial Wage Order(s), the California Code of
15 Regulations and the California Labor Code including Sections 204, 210, 221, 226.7,
16 246, 510, 512, 1194, 1197, 1197.1, 1198, 2802 and the Fair Labor Standards Act and
17 federal regulations promulgated thereunder, for which this Court should issue
18 declaratory and other equitable relief pursuant to Cal. Bus. & Prof. Code § 17203 as
19 may be necessary to prevent and remedy the conduct held to constitute unfair
20 competition, including restitution of wages wrongfully withheld.

21 55. By the conduct alleged herein, DEFENDANT's practices were unlawful
22 and unfair in that these practices violate public policy, were immoral, unethical,
23 oppressive, unscrupulous or substantially injurious to employees, and were without
24 valid justification or utility for which this Court should issue equitable and injunctive
25 relief pursuant to Section 17203 of the California Business & Professions Code,
26 including restitution of wages wrongfully withheld.

27 56. By the conduct alleged herein, DEFENDANT's practices were deceptive
28 and fraudulent in that DEFENDANT's policy and practice failed to provide the
legally mandated meal and rest periods, the required amount of compensation for
missed meal and rest periods and overtime and minimum wages owed, failed to
timely pay wages, and failed to reimburse all necessary business expenses incurred,
and failed to provide Fair Labor Standards Act overtime wages due for overtime

1 worked as a result of failing to include non-discretionary incentive compensation into
2 their regular rates of pay for purposes of computing the proper overtime pay due to a
3 business practice that cannot be justified, pursuant to the applicable Cal. Lab. Code,
4 and Industrial Welfare Commission requirements in violation of Cal. Bus. Code §§
5 17200, *et seq.*, and for which this Court should issue injunctive and equitable relief,
6 pursuant to Cal. Bus. & Prof. Code § 17203, including restitution of wages
7 wrongfully withheld.

8 57. By the conduct alleged herein, DEFENDANT's practices were also
9 unlawful, unfair and deceptive in that DEFENDANT's employment practices caused
10 PLAINTIFF and the other members of the CALIFORNIA CLASS to be underpaid
11 during their employment with DEFENDANT.

12 58. By the conduct alleged herein, DEFENDANT's practices were also
13 unlawful, unfair and deceptive in that DEFENDANT's policies, practices and
14 procedures failed to provide all legally required meal breaks to PLAINTIFF and the
15 other members of the CALIFORNIA CLASS as required by Cal. Lab. Code §§ 226.7
16 and 512.

17 59. Therefore, PLAINTIFF demands on behalf of herself and on behalf of
18 each CALIFORNIA CLASS Member, one (1) hour of pay for each workday in which
19 an off-duty meal period was not timely provided for each five (5) hours of work,
20 and/or one (1) hour of pay for each workday in which a second off-duty meal period
21 was not timely provided for each ten (10) hours of work.

22 60. PLAINTIFF further demands on behalf of herself and each member of
23 the CALIFORNIA LABOR SUB-CLASS, one (1) hour of pay for each workday in
24 which an off duty paid rest period was not timely provided as required by law.

25 61. By and through the unlawful and unfair business practices described
26 herein, DEFENDANT has obtained valuable property, money and services from
27 PLAINTIFF and the other members of the CALIFORNIA CLASS, including earned
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1 wages for all time worked, and has deprived them of valuable rights and benefits
2 guaranteed by law and contract, all to the detriment of these employees and to the
3 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete against
4 competitors who comply with the law.

5 62. All the acts described herein as violations of, among other things, the
6 Industrial Welfare Commission Wage Orders, the California Code of Regulations,
7 and the California Labor Code, were unlawful and in violation of public policy, were
8 immoral, unethical, oppressive and unscrupulous, were deceptive, and thereby
9 constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus.
10 & Prof. Code §§ 17200, *et seq.*

11 63. PLAINTIFF and the other members of the CALIFORNIA CLASS are
12 entitled to, and do, seek such relief as may be necessary to restore to them the money
13 and property which DEFENDANT has acquired, or of which PLAINTIFF and the
14 other members of the CALIFORNIA CLASS have been deprived, by means of the
15 above described unlawful and unfair business practices, including earned but unpaid
16 wages for all time worked.

17 64. PLAINTIFF and the other members of the CALIFORNIA CLASS are
18 further entitled to, and do, seek a declaration that the described business practices are
19 unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
20 DEFENDANT from engaging in any unlawful and unfair business practices in the
21 future.

22 65. PLAINTIFF and the other members of the CALIFORNIA CLASS have
23 no plain, speedy and/or adequate remedy at law that will end the unlawful and unfair
24 business practices of DEFENDANT. Further, the practices herein alleged presently
25 continue to occur unabated. As a result of the unlawful and unfair business practices
26 described herein, PLAINTIFF and the other members of the CALIFORNIA CLASS
27 have suffered and will continue to suffer irreparable legal and economic harm unless
28

1 DEFENDANT is restrained from continuing to engage in these unlawful and unfair
2 business practices.

3
4 **SECOND CAUSE OF ACTION**

5 **For Failure To Pay Minimum Wages**

6 **[Cal. Lab. Code §§ 1194, 1197 and 1197.1]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**

8 **and Against All Defendants)**

9 66. PLAINTIFF, and the other members of the CALIFORNIA LABOR
10 SUB- CLASS, reallege and incorporate by this reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

12 67. PLAINTIFF and the other members of the CALIFORNIA LABOR
13 SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of
14 the California Labor Code and the Industrial Welfare Commission requirements for
15 DEFENDANT's failure to accurately calculate and pay minimum wages to
16 PLAINTIFF and CALIFORNIA CLASS Members.

17 68. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations,
18 and public policy, an employer must timely pay its employees for all hours worked.

19 69. Cal. Lab. Code § 1197 provides the minimum wage for employees fixed
20 by the commission is the minimum wage to be paid to employees, and the payment of
21 a less wage than the minimum so fixed is unlawful.

22 70. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
23 wages, including minimum wage compensation and interest thereon, together with
24 the costs of suit.

25 71. DEFENDANT maintained a wage practice of paying PLAINTIFF and
26 the other members of the CALIFORNIA LABOR SUB-CLASS without regard to the
27 correct amount of time they work. As set forth herein, DEFENDANT's policy and
28

1 practice was to unlawfully and intentionally deny timely payment of wages due to
2 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS.

3 72. DEFENDANT's unlawful wage and hour practices manifested, without
4 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
5 result of implementing a policy and practice that denies accurate compensation to
6 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS in
7 regards to minimum wage pay.

8 73. In committing these violations of the California Labor Code,
9 DEFENDANT inaccurately calculated the correct time worked and consequently
10 underpaid the actual time worked by PLAINTIFF and other members of the
11 CALIFORNIA LABOR SUB-CLASS. DEFENDANT acted in an illegal attempt to
12 avoid the payment of all earned wages, and other benefits in violation of the
13 California Labor Code, the Industrial Welfare Commission requirements and other
14 applicable laws and regulations.

15 74. As a direct result of DEFENDANT's unlawful wage practices as alleged
16 herein, PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
17 CLASS did not receive the correct minimum wage compensation for their time
18 worked for DEFENDANT.

19 75. During the CALIFORNIA LABOR SUB-CLASS PERIOD,
20 DEFENDANT required, permitted or suffered PLAINTIFF and CALIFORNIA
21 LABOR SUB-CLASS Members to work without paying them for all the time they
22 were under DEFENDANT's control. During the CALIFORNIA LABOR SUB-
23 CLASS PERIOD, PLAINTIFF and the other members of the CALIFORNIA LABOR
24 SUB-CLASS were paid less for time worked that they were entitled to, constituting a
25 failure to pay all earned wages.

26 76. By virtue of DEFENDANT's unlawful failure to accurately pay all
27 earned compensation to PLAINTIFF and the other members of the CALIFORNIA
28

1 LABOR SUB-CLASS for the true time they worked, PLAINTIFF and the other
2 members of the CALIFORNIA LABOR SUB-CLASS have suffered and will
3 continue to suffer an economic injury in amounts which are presently unknown to
4 them and which will be ascertained according to proof at trial.

5 77. DEFENDANT knew or should have known that PLAINTIFF and the
6 other members of the CALIFORNIA LABOR SUB-CLASS were under compensated
7 for their time worked. DEFENDANT elected, either through intentional malfeasance
8 or gross nonfeasance, to not pay employees for their labor as a matter of company
9 policy, practice and procedure, and DEFENDANT perpetrated this scheme by
10 refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR
11 SUB-CLASS the correct minimum wages for their time worked.

12 78. In performing the acts and practices herein alleged in violation of
13 California labor laws, and refusing to compensate the members of the CALIFORNIA
14 LABOR SUB-CLASS for all time worked and provide them with the requisite
15 compensation, DEFENDANT acted and continues to act intentionally, oppressively,
16 and maliciously toward PLAINTIFF and the other members of the CALIFORNIA
17 LABOR SUB-CLASS with a conscious and utter disregard for their legal rights, or
18 the consequences to them, and with the despicable intent of depriving them of their
19 property and legal rights, and otherwise causing them injury in order to increase
20 company profits at the expense of these employees.

21 79. PLAINTIFF and the other members of the CALIFORNIA LABOR
22 SUB-CLASS therefore request recovery of all unpaid wages, according to proof,
23 interest, statutory costs, as well as the assessment of any statutory penalties against
24 DEFENDANT, in a sum as provided by the California Labor Code and/or other
25 applicable statutes. To the extent minimum wage compensation is determined to be
26 owed to the CALIFORNIA LABOR SUB-CLASS Members who have terminated
27 their employment, DEFENDANT's conduct also violates Labor Code §§ 201 and/or
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1 202, and therefore these individuals are also be entitled to waiting time penalties
2 under Cal. Lab. Code § 203, which penalties are sought herein on behalf of these
3 CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's conduct as
4 alleged herein was willful, intentional and not in good faith. Further, PLAINTIFF
5 and other CALIFORNIA LABOR SUB-CLASS Members are entitled to seek and
6 recover statutory costs.

7
8 **THIRD CAUSE OF ACTION**

9 **For Failure To Pay Overtime Compensation**

10 **[Cal. Lab. Code § 510]**

11 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
12 **Defendants)**

13 80. PLAINTIFF, and the other members of the CALIFORNIA LABOR
14 SUB-CLASS, reallege and incorporate by this reference, as though full set forth
15 herein, the prior paragraphs of this Complaint.

16 81. PLAINTIFF and the other members of the CALIFORNIA LABOR
17 SUB-CLASS bring a claim for DEFENDANT's willful and intentional violations of
18 the California Labor Code and the Industrial Welfare Commission requirements for
19 DEFENDANT's failure to pay these employees for all overtime worked, including,
20 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours
21 in a workday, and/or forty (40) hours in any workweek.

22 82. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations,
23 and public policy, an employer must timely pay its employees for all hours worked.

24 83. Cal. Lab. Code § 510 further provides that employees in California shall
25 not be employed more than eight (8) hours per workday and more than forty (40)
26 hours per workweek unless they receive additional compensation beyond their
27 regular wages in amounts specified by law.
28

1 84. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid
2 wages, including minimum wage and overtime compensation and interest thereon,
3 together with the costs of suit. Cal. Lab. Code § 1198 further states that the
4 employment of an employee for longer hours than those fixed by the Industrial
5 Welfare Commission is unlawful.

6 85. During the CALIFORNIA LABOR SUB-CLASS PERIOD, PLAINTIFF
7 and CALIFORNIA LABOR SUB-CLASS Members were required, permitted or
8 suffered by DEFENDANT to work for DEFENDANT and were not paid for all the
9 time they worked, including overtime work.

10 86. DEFENDANT's unlawful wage and hour practices manifested, without
11 limitation, applicable to the CALIFORNIA LABOR SUB-CLASS as a whole, as a
12 result of implementing a policy and practice that failed to accurately record overtime
13 worked by PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
14 and denied accurate compensation to PLAINTIFF and the other members of the
15 CALIFORNIA LABOR SUB-CLASS for overtime worked, including, the overtime
16 work performed in excess of eight (8) hours in a workday, and/or twelve (12) hours
17 in a workday, and/or forty (40) hours in any workweek.

18 87. In committing these violations of the California Labor Code,
19 DEFENDANT inaccurately recorded overtime worked and consequently underpaid
20 the overtime worked by PLAINTIFF and other CALIFORNIA LABOR-SUB CLASS
21 Members. DEFENDANT acted in an illegal attempt to avoid the payment of all
22 earned wages, and other benefits in violation of the California Labor Code, the
23 Industrial Welfare Commission requirements and other applicable laws and
24 regulations.

25 88. As a direct result of DEFENDANT's unlawful wage practices as alleged
26 herein, the PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
27 CLASS did not receive full compensation for overtime worked.
28

1 89. Cal. Lab. Code § 515 sets out various categories of employees who are
2 exempt from the overtime requirements of the law. None of these exemptions are
3 applicable to the PLAINTIFF and the other members of the CALIFORNIA LABOR
4 SUB-CLASS. Further, PLAINTIFF and the other members of the CALIFORNIA
5 LABOR SUB-CLASS were not subject to a valid collective bargaining agreement
6 that would preclude the causes of action contained herein this Complaint. Rather,
7 PLAINTIFF brings this Action on behalf of herself and the CALIFORNIA LABOR
8 SUB-CLASS based on DEFENDANT's violations of non-negotiable, non-waiveable
9 rights provided by the State of California.

10 90. During the CALIFORNIA LABOR SUB-CLASS PERIOD,
11 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
12 have been paid less for overtime worked that they are entitled to, constituting a
13 failure to pay all earned wages.

14 91. DEFENDANT failed to accurately pay the PLAINTIFF and the other
15 members of the CALIFORNIA LABOR SUB-CLASS overtime wages for the time
16 they worked which was in excess of the maximum hours permissible by law as
17 required by Cal. Lab. Code §§ 510, 1194 & 1198, even though PLAINTIFF and the
18 other members of the CALIFORNIA LABOR SUB-CLASS were required to work,
19 and did in fact work, overtime as to which DEFENDANT failed to accurately record
20 and pay as evidenced by DEFENDANT's business records and witnessed by
21 employees.

22 92. By virtue of DEFENDANT's unlawful failure to accurately pay all
23 earned compensation to PLAINTIFF and the other members of the CALIFORNIA
24 LABOR SUB-CLASS for the true amount of time they worked, PLAINTIFF and the
25 other members of the CALIFORNIA LABOR SUB-CLASS have suffered and will
26 continue to suffer an economic injury in amounts which are presently unknown to
27 them and which will be ascertained according to proof at trial.
28

1 93. DEFENDANT knew or should have known that PLAINTIFF and the
2 other members of the CALIFORNIA LABOR SUB-CLASS were under compensated
3 for all overtime worked. DEFENDANT elected, either through intentional
4 malfeasance or gross nonfeasance, to not pay employees for their labor as a matter of
5 company policy, practice and procedure, and DEFENDANT perpetrated this scheme
6 by refusing to pay PLAINTIFF and the other members of the CALIFORNIA LABOR
7 SUB-CLASS for overtime worked.

8 94. In performing the acts and practices herein alleged in violation of
9 California labor laws, and refusing to compensate the members of the CALIFORNIA
10 LABOR SUB-CLASS for all overtime worked and provide them with the requisite
11 overtime compensation, DEFENDANT acted and continues to act intentionally,
12 oppressively, and maliciously toward PLAINTIFF and the other members of the
13 CALIFORNIA LABOR SUB-CLASS with a conscious of and utter disregard for
14 their legal rights, or the consequences to them, and with the despicable intent of
15 depriving them of their property and legal rights, and otherwise causing them injury
16 in order to increase company profits at the expense of these employees.

17 95. PLAINTIFF and the other members of the CALIFORNIA LABOR
18 SUB-CLASS therefore request recovery of all overtime wages, according to proof,
19 interest, statutory costs, as well as the assessment of any statutory penalties against
20 DEFENDANT, in a sum as provided by the California Labor Code and/or other
21 applicable statutes. To the extent minimum and/or overtime compensation is
22 determined to be owed to the CALIFORNIA LABOR SUB-CLASS Members who
23 have terminated their employment, DEFENDANT's conduct also violates Labor
24 Code §§ 201 and/or 202, and therefore these individuals are also be entitled to
25 waiting time penalties under Cal. Lab. Code § 203, which penalties are sought herein
26 on behalf of these CALIFORNIA LABOR SUB-CLASS Members. DEFENDANT's
27 conduct as alleged herein was willful, intentional and not in good faith. Further,
28

1 PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members are entitled to
2 seek and recover statutory costs.

3
4 **FOURTH CAUSE OF ACTION**

5 **For Failure to Provide Required Meal Periods**

6 **[Cal. Lab. Code §§ 226.7 & 512]**

7 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
8 **Defendants)**

9 96. PLAINTIFF, and the other members of the CALIFORNIA LABOR
10 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth
11 herein, the prior paragraphs of this Complaint.

12 97. During the CALIFORNIA CLASS PERIOD, DEFENDANT from time
13 to time failed to provide all the legally required off-duty meal breaks to PLAINTIFF
14 and the other CALIFORNIA LABOR SUB-CLASS Members as required by the
15 applicable Wage Order and Labor Code. The nature of the work performed by
16 PLAINTIFF and CALIFORNIA LABOR SUB-CLASS MEMBERS did not prevent
17 these employees from being relieved of all of their duties for the legally required off-
18 duty meal periods. As a result of their rigorous work schedules, PLAINTIFF and
19 other CALIFORNIA LABOR SUB-CLASS Members were from time to time not
20 fully relieved of duty by DEFENDANT for their meal periods. Additionally,
21 DEFENDANT's failure to provide PLAINTIFF and the CALIFORNIA LABOR
22 SUB-CLASS Members with legally required meal breaks prior to their fifth (5th)
23 hour of work is evidenced by DEFENDANT's business records from time to time.
24 Further, DEFENDANT failed to provide PLAINTIFF and CALIFORNIA CLASS
25 Members with a second off-duty meal period in some workdays in which these
26 employees were required by DEFENDANT to work ten (10) hours of work from time
27 to time. As a result, PLAINTIFF and other members of the CALIFORNIA LABOR
28

1 SUB-CLASS therefore forfeited meal breaks without additional compensation and in
2 accordance with DEFENDANT's strict corporate policy and practice.

3 98. DEFENDANT further violates California Labor Code §§ 226.7 and the
4 applicable IWC Wage Order by failing to compensate PLAINTIFF and
5 CALIFORNIA LABOR SUB-CLASS Members who were not provided a meal
6 period, in accordance with the applicable Wage Order, one additional hour of
7 compensation at each employee's regular rate of pay for each workday that a meal
8 period was not provided.

9 99. As a proximate result of the aforementioned violations, PLAINTIFF and
10 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount
11 according to proof at trial, and seek all wages earned and due, interest, penalties,
12 expenses and costs of suit.

13
14 **FIFTH CAUSE OF ACTION**

15 **For Failure to Provide Required Rest Periods**

16 **[Cal. Lab. Code §§ 226.7 & 512]**

17 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
18 **Defendants)**

19 100. PLAINTIFF, and the other members of the CALIFORNIA LABOR
20 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth
21 herein, the prior paragraphs of this Complaint.

22 101. PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members
23 were from time to time required to work in excess of four (4) hours without being
24 provided ten (10) minute rest periods. Further, these employees from time to time
25 were denied their first rest periods of at least ten (10) minutes for some shifts worked
26 of at least two (2) to four (4) hours, a first and second rest period of at least ten (10)
27 minutes for some shifts worked of between six (6) and eight (8) hours, and a first,
28

1 second and third rest period of at least ten (10) minutes for some shifts worked of ten
2 (10) hours or more from time to time. PLAINTIFF and other CALIFORNIA LABOR
3 SUB-CLASS Members were also not provided with one hour wages in lieu thereof.
4 As a result of their rigorous work schedules, PLAINTIFF and other CALIFORNIA
5 LABOR SUB-CLASS Members were periodically denied their proper rest periods by
6 DEFENDANT and DEFENDANT's managers.

7 102. DEFENDANT further violated California Labor Code §§ 226.7 and the
8 applicable IWC Wage Order by failing to compensate PLAINTIFF and
9 CALIFORNIA LABOR SUB-CLASS Members who were not provided a rest period,
10 in accordance with the applicable Wage Order, one additional hour of compensation
11 at each employee's regular rate of pay for each workday that rest period was not
12 provided.

13 103. As a proximate result of the aforementioned violations, PLAINTIFF and
14 CALIFORNIA LABOR SUB-CLASS Members have been damaged in an amount
15 according to proof at trial, and seek all wages earned and due, interest, penalties,
16 expenses and costs of suit.

17
18 **SIXTH CAUSE OF ACTION**

19 **For Failure to Provide Accurate Itemized Statements**

20 **[Cal. Lab. Code § 226]**

21 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
22 **Defendants)**

23 104. PLAINTIFF, and the other members of the CALIFORNIA LABOR
24 SUB-CLASS, reallege and incorporate by this reference, as though fully set forth
25 herein, the prior paragraphs of this Complaint.

26 105. Cal. Labor Code § 226 provides that an employer must furnish
27 employees with an "accurate itemized" statement in writing showing:
28

- (1) gross wages earned,
- (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- (5) net wages earned,
- (6) the inclusive dates of the period for which the employee is paid,
- (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- (8) the name and address of the legal entity that is the employer, and
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

106. From time to time, DEFENDANT also failed to provide PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF and CALIFORNIA LABOR SUB-CLASS Members were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFF and other CALIFORNIA LABOR SUB-CLASS Members failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period. When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.* As a

1 result, DEFENDANT from time to time provided PLAINTIFF and the other members
 2 of the CALIFORNIA LABOR SUB-CLASS with wage statements which violated
 3 Cal. Lab. Code § 226.

4 107. DEFENDANT knowingly and intentionally failed to comply with Cal.
 5 Lab. Code § 226, causing injury and damages to PLAINTIFF and the other members
 6 of the CALIFORNIA LABOR SUB-CLASS. These damages include, but are not
 7 limited to, costs expended calculating the correct wages for all missed meal and rest
 8 breaks and the amount of employment taxes which were not properly paid to state
 9 and federal tax authorities. These damages are difficult to estimate. Therefore,
 10 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
 11 may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay
 12 period in which the violation occurred, and one hundred dollars (\$100.00) for each
 13 violation in a subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount
 14 according to proof at the time of trial (but in no event more than four thousand dollars
 15 (\$4,000.00) for PLAINTIFF and each respective member of the CALIFORNIA
 16 LABOR SUB-CLASS herein).

17 SEVENTH CAUSE OF ACTION

18 **For Failure to Reimburse Employees for Required Expenses**

19 **[Cal. Lab. Code § 2802]**

20 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS and Against All**
 21 **Defendants)**

22 108. PLAINTIFF and the other CALIFORNIA LABOR SUB-CLASS
 23 members reallege and incorporate by this reference, as though fully set forth herein,
 24 the prior paragraphs of this Complaint.

25 109. Cal. Lab. Code § 2802 provides, in relevant part, that:

26 An employer shall indemnify his or her employee for all necessary
 27 expenditures or losses incurred by the employee in direct consequence
 28 of the discharge of his or her duties, or of his or her obedience to the

1 directions of the employer, even though unlawful, unless the employee,
2 at the time of obeying the directions, believed them to be unlawful.

3 110. At all relevant times herein, DEFENDANT violated Cal. Lab. Code §
4 2802, by failing to indemnify and reimburse PLAINTIFF and the CALIFORNIA
5 LABOR SUB-CLASS members for required expenses incurred in the discharge of
6 their job duties for DEFENDANT's benefit. DEFENDANT failed to reimburse
7 PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members for expenses
8 which included, but were not limited to, costs related to using their personal cellular
9 phones on behalf of and for the benefit of DEFENDANT. Specifically, PLAINTIFF
10 and other CALIFORNIA LABOR SUB-CLASS Members were required by
11 DEFENDANT to use their personal cellular phones in order to perform work related
12 job tasks. DEFENDANT's policy and practice was to not reimburse PLAINTIFF and
13 the CALIFORNIA LABOR SUB-CLASS members for expenses resulting from using
14 their personal cellular phones for DEFENDANT within the course and scope of their
15 employment for DEFENDANT. These expenses were necessary to complete their
16 principal job duties. DEFENDANT is estopped by DEFENDANT's conduct to assert
17 any waiver of this expectation. Although these expenses were necessary expenses
18 incurred by PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS members,
19 DEFENDANT failed to indemnify and reimburse PLAINTIFF and the
20 CALIFORNIA LABOR SUB-CLASS members for these expenses as an employer is
21 required to do under the laws and regulations of California.

22 111. PLAINTIFF therefore demands reimbursement for expenditures or
23 losses incurred by herself and the CALIFORNIA LABOR SUB-CLASS members in
24 the discharge of their job duties for DEFENDANT, or their obedience to the
25 directions of DEFENDANT, with interest at the statutory rate and costs under Cal.
26 Lab. Code § 2802.

27 ///

EIGHTH CAUSE OF ACTION

For Failure to Pay Wages When Due

[Cal. Lab. Code §§ 201, 202, 203]

**(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS
and Against All Defendants)**

112. PLAINTIFF, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

113. Cal. Lab. Code § 200 provides, in relevant part, that:

As used in this article:

(a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, Commission basis, or other method of calculation.

(b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

114. Cal. Lab. Code § 201 provides, in relevant part, "that If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

115. Cal. Lab. Code § 202 provides, in relevant part, that:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

116. There was no definite term in PLAINTIFF's or any CALIFORNIA LABOR SUB-CLASS Members' employment contract.

117. Cal. Lab. Code § 203 provides, in relevant part, that:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the

1 same rate until paid or until an action therefor is commenced; but the
2 wages shall not continue for more than 30 days.

3 118. The employment of PLAINTIFF and many CALIFORNIA LABOR
4 SUB-CLASS Members has terminated and DEFENDANT has not tendered payment
5 of all wages owed as required by law. Additionally, at all times during the term of
6 PLAINTIFF's employment with DEFENDANT, PLAINTIFF and CALIFORNIA
7 LABOR SUB-CLASS Members earned and accrued vested vacation and holiday time
8 on the date of their termination pursuant to DEFENDANT's uniform vacation
9 policies and applicable California law. The amount of vacation pay PLAINTIFF and
10 the other CALIFORNIA LABOR SUB-CLASS Members earned and accumulated is
11 evidenced by DEFENDANT's business records. Additionally, DEFENDANT also
12 underpaid accrued vested vacation wages to PLAINTIFF and other CALIFORNIA
13 LABOR SUB-CLASS MEMBERS by failing to pay such wages at the regular rate of
14 pay and more specifically the final rate of pay that included all non-discretionary
15 incentive compensation. Rather than pay vacation wages at the regular rate of pay,
16 DEFENDANT underpaid vacation wages to PLAINTIFF and other CALIFORNIA
17 LABOR SUB-CLASS Members at their base rates of pay, instead of including all of
18 PLAINTIFF's and CALIFORNIA LABOR SUB-CLASS Members' non-
19 discretionary incentive compensation into the vacation wage payment calculations.
20 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at
21 which PLAINTIFF and other CALIFORNIA LABOR CLASS Members would be
22 paid vacation upon leaving employment with DEFENDANT. As a result of
23 DEFENDANT's unlawful practice, policy and procedure to deny paying the
24 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS all
25 of their vested vacation and holiday time, DEFENDANT failed to pay the
26 PLAINTIFF and the members of the CALIFORNIA LABOR SUB-CLASS all vested
27 vacation time as wages due upon employment termination, in violation of the
28 California Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT

1 underpaid waiting time penalties to PLAINTIFF and other CALIFORNIA LABOR
2 SUB-CLASS Members at their base rates of pay, instead of including all of
3 PLAINTIFF's' and CALIFORNIA LABOR SUB-CLASS Members' non-
4 discretionary compensation into the waiting time penalty calculations. This failure
5 by DEFENDANT is believed to be the result of DEFENDANT's unlawful, unfair and
6 deceptive refusal to provide compensation for earned, accrued and vested vacation
7 and holiday time, as well as the corresponding waiting time penalties that were paid.
8 DEFENDANT perpetrated this unlawful, unfair and deceptive practice to the
9 detriment of the PLAINTIFF and the members of the CALIFORNIA LABOR SUB-
10 CLASS . DEFENDANT's uniform practice and policy of failing to pay the LABOR
11 SUB-CLASS Members for all vested vacation and holiday time accumulated at
12 employment termination violated and continues to violate Section 227.3 of the
13 California Labor Code.

14 119. Therefore, as provided by Cal Lab. Code § 203, on behalf of herself and
15 the members of the CALIFORNIA LABOR SUB-CLASS whose employment has
16 terminated and who have not been fully paid their wages due to them, PLAINTIFF
17 demands thirty days of pay as penalty for not paying all wages due at time of
18 termination for all employees who terminated employment during the CALIFORNIA
19 LABOR SUB-CLASS PERIOD and demands an accounting and payment of all
20 wages due, plus interest and statutory costs as allowed by law.

21
22 **NINTH CAUSE OF ACTION**

23 **For Failure to Pay Sick Pay Wages**

24 **[Cal. Lab. Code §§ 201-204, 210, 233, 246]**

25 **(By PLAINTIFF and the CALIFORNIA LABOR SUB-CLASS**
26 **and Against All Defendants)**

27 120. PLAINTIFF, and the other members of the CALIFORNIA LABOR
28

1 SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein,
2 the prior paragraphs of this Complaint.

3 121. Cal Lab. Code § 233 provides that an employer must permit an
4 employee to use accrued sick leave in accordance with Cal Lab. Code § 246.5 at the
5 employee's then current rate of entitlement. Cal Lab. Code § 246 provides that an
6 employee is entitled to sick pay wages for use of accrued sick leave pursuant to Cal
7 Lab. Code § 246.5. Specifically, once accrued sick leave is used as paid sick time, an
8 employee has a vested right to sick pay wages, which an employer must calculate and
9 compensate based on one of two calculations: (i) "Paid sick time for nonexempt
10 employees shall be calculated in the same manner as the regular rate of pay for the
11 workweek in which the employee uses paid sick time, whether or not the employee
12 actually works overtime in that workweek," or (ii) "Paid sick time for nonexempt
13 employees shall be calculated by dividing the employee's total wages, not including
14 overtime premium pay, by the employee's total hours worked in the full pay periods
15 of the prior 90 days of employment." Under Cal Lab. Code §§ 218 and 233,
16 employees may sue to recover underpaid sick pay wages as damages.

17 122. As a matter of policy and practice, DEFENDANT pays sick pay wages
18 to PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-CLASS
19 at the incorrect rate of pay. PLAINTIFF and the other members of the
20 CALIFORNIA LABOR-SUB-CLASS regularly use accrued sick leave in the
21 workweeks in which they also earn non-hourly remuneration. As a matter of policy
22 and practice, DEFENDANT pays sick pay wages to PLAINTIFF and the other
23 members of the CALIFORNIA LABOR-SUB-CLASS at the base hourly pay, as
24 opposed to the regular rate of pay, which would consider all non-hourly remuneration
25 in addition to base hourly wages, or the rate resulting from dividing the employee's
26 total wages, not including overtime premium pay, by the employee's total hours
27 worked in the full pay periods of the prior 90 days of employment. As a result,
28

1 DEFENDANT underpaid sick pay wages to PLAINTIFF and the other members of
2 the CALIFORNIA LABOR-SUB-CLASS.

3 123. Cal. Lab. Code § 204 provides that wages generally are due and payable
4 twice during each calendar month and are to be paid no later than the payday for the
5 next regular payroll period. Consistent with Cal. Lab. Code § 204, Cal. Lab. Code §
6 246 specifically requires that, upon use of accrued sick leave, vested sick pay wages
7 are due and to be paid no later than the payday for the next regular payroll period
8 after accrued sick leave is used as paid sick time. Similarly, Cal. Lab. Code § 201
9 provides that if an employer discharges an employee, wages earned and unpaid at the
10 time of discharge are due and payable immediately. Cal. Lab. Code § 202 provides
11 that an employee is entitled to receive all unpaid wages no later than 72 hours after an
12 employee quits his or her employment, unless the employee has given 72-hour notice
13 of his or her intention to quit, in which case the employee is entitled to his or her
14 wages at the time of quitting. The Labor Code penalizes untimely payments. For
15 example, Cal. Lab. Code § 203 provides that if an employer willfully fails to pay
16 wages owed in accordance with Cal. Lab. Code §§ 201-202, then the wages of the
17 employee shall continue as a penalty from the due date, and at the same rate until
18 paid, but the wages shall not continue for more than thirty (30) days. Likewise, Cal.
19 Lab. Code § 210 provides penalties for violations of Cal. Lab. Code § 204 and
20 untimely payments during employment. Under Cal. Lab. Code §§ 203, 210 and 218,
21 employees may sue to recover applicable penalties.

22 124. As alleged herein and as a matter of policy and practice, DEFENDANT
23 routinely underpays sick pay wages and thus did not timely pay PLAINTIFF and the
24 other members of the CALIFORNIA LABOR-SUB-CLASS all owing and underpaid
25 sick pay wages. As a result, DEFENDANT violates Cal. Lab. Code §§ 201-204, 210,
26 233, and 246, among other Labor Code provisions. PLAINTIFF is informed and
27 believes that DEFENDANT was advised by skilled lawyers and knew, or should have
28

known, of the mandates of the Labor Code as it relates to PLAINTIFF's allegations, especially since the California Supreme Court has explained that "[c]ourts have recognized that 'wages' also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007)(emphasis added). Because DEFENDANT willfully fails to timely pay PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS all sick pay wages due, DEFENDANT is subject to applicable penalties.

125. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles PLAINTIFF and the other members of the CALIFORNIA LABOR-SUB-CLASS to underpaid sick pay wages, including interest thereon, applicable penalties, attorney's fees, and costs of suit.

TENTH CAUSE OF ACTION

Wrongful Termination In Violation of Public Policy

(By PLAINTIFF Against All Defendants)

126. PLAINTIFF realleges and incorporates by reference, as though fully set forth herein, the prior paragraphs of this Complaint.

127. In March of 2022, and continuing throughout the rest of PLAINTIFF's employment, PLAINTIFF engaged in protected activity by filing a complaint to the Occupational Health and Safety Administration regarding DEFENDANT's illegal employment practices, including, but not limited to, DEFENDANT'S failure to follow proper medical guidelines for PLAINTIFF'S employment and improper training of employees.

128. Subsequent to PLAINTIFF's participation in protective activity by filing a complaint to the Occupational Health and Safety Administration about DEFENDANT's unlawful employment practices, DEFENDANT subjected

1 PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF.
2 Specifically, after PLAINTIFF filed a claim with the Occupational Health and Safety
3 Administration in March of 2022 , DEFENDANT terminated PLAINTIFF's
4 employment with DEFENDANT in May of 2022.

5 129. As a proximate result of DEFENDANT'S willful, knowing, and
6 intentional act, PLAINTIFF has suffered and continues to suffer humiliation,
7 emotional distress, and mental and physical pain and anguish, all to PLAINTIFF's
8 damage in a sum according to proof.

9 130. As a result of DEFENDANT'S adverse employment actions against
10 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums
11 according to proof.

12 131. DEFENDANT's misconduct was committed intentionally, in a malicious,
13 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
14 against DEFENDANT.

15
16 **ELEVENTH CAUSE OF ACTION**

17 **For Violation of the Private Attorneys General Act**

18 **[Cal. Lab. Code §§ 2698, *et seq.*]**

19 **(By PLAINTIFF and Against All Defendants)**

20 132. PLAINTIFF realleges and incorporates by reference, as though fully set
21 forth herein, the prior paragraphs of this Complaint.

22 133. PAGA is a mechanism by which the State of California itself can
23 enforce state labor laws through the employee suing under the PAGA who do so as
24 the proxy or agent of the state's labor law enforcement agencies. An action to
25 recover civil penalties under PAGA is fundamentally a law enforcement action
26 designed to protect the public and not to benefit private parties. The purpose of the
27 PAGA is not to recover damages or restitution, but to create a means of "deputizing"
28

1 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA,
2 the California Legislature specified that "it was ... in the public interest to allow
3 aggrieved employees, acting as private attorneys general to recover civil penalties for
4 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims
5 cannot be subject to arbitration.

6 134. PLAINTIFF, and such persons that may be added from time to time who
7 satisfy the requirements and exhaust the administrative procedures under the Private
8 Attorney General Act, brings this Representative Action on behalf of the State of
9 California with respect to himself and all individuals who are or previously were
10 employed by DEFENDANT in California as Freight Handlers and classified as non-
11 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of
12 January 24, 2022 until a date as determined by the Court (the "PAGA PERIOD").

13 135. On January 24, 2023, PLAINTIFF gave written notice by electronic mail
14 to the Labor and Workforce Development Agency (the "Agency") and by certified
15 mail to the employer of the specific provisions of this code alleged to have been
16 violated as required by Labor Code § 2699.3. The statutory waiting period for
17 PLAINTIFF to add these allegations to the Complaint has expired. As a result,
18 pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil
19 action under PAGA pursuant to Section 2699 as the proxy of the State of California
20 with respect to all AGGRIEVED EMPLOYEES as herein defined.

21 136. The policies, acts and practices heretofore described were and are an
22 unlawful business act or practice because DEFENDANT (a) failed to provide
23 PLAINTIFF and the AGGRIEVED EMPLOYEES accurate itemized wage
24 statements, (b) failed to properly record and provide legally required meal and rest
25 periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick
26 pay wages, (e) failed to reimburse employees for required expenses, and (f) failed to
27 provide wages when due, all in violation of the applicable Labor Code sections listed
28

in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

137. All of the conduct and violations alleged herein occurred during the PAGAPERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for Publication 12/19/18)

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the CALIFORNIA CLASS:

A) That the Court certify the First Cause of Action asserted by the CALIFORNIA CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;

B) An order temporarily, preliminarily and permanently enjoining and restraining DEFENDANT from engaging in similar unlawful conduct as set forth herein;

¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

- 1 C) An order requiring DEFENDANT to pay all wages and all sums unlawfully
2 withheld from compensation due to PLAINTIFF and the other members of
3 the CALIFORNIA CLASS; and,
- 4 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a
5 fluid fund for restitution of the sums incidental to DEFENDANT's
6 violations due to PLAINTIFF and to the other members of the
7 CALIFORNIA CLASS.

8 2. On behalf of the CALIFORNIA LABOR SUB-CLASS:

- 9 A) That the Court certify the Second, Third, Fourth, Fifth, Sixth, Seventh,
10 Eighth and Ninth Causes of Action asserted by the CALIFORNIA LABOR
11 SUB-CLASS as a class action pursuant to Cal. Code of Civ. Proc. § 382;
- 12 B) Compensatory damages, according to proof at trial, including
13 compensatory damages for minimum and overtime compensation due
14 PLAINTIFF and the other members of the CALIFORNIA LABOR SUB-
15 CLASS, during the applicable CALIFORNIA LABOR SUB-CLASS
16 PERIOD plus interest thereon at the statutory rate;
- 17 C) The greater of all actual damages or fifty dollars (\$50) for the initial pay
18 period in which a violation occurs and one hundred dollars (\$100) per each
19 member of the CALIFORNIA LABOR SUB-CLASS for each violation in
20 a subsequent pay period, not exceeding an aggregate penalty of four
21 thousand dollars (\$4,000), and an award of costs for violation of Cal. Lab.
22 Code § 226;
- 23 D) Meal and rest period compensation pursuant to Cal. Lab. Code §§ 226.7,
24 512 and the applicable IWC Wage Order;
- 25 E) For liquidated damages pursuant to California Labor Code Sections 1194.2
26 and 1197;
- 27
28

1 F) The amount of the expenses PLAINTIFF and each member of the
 2 CALIFORNIA LABOR SUBCLASS incurred in the course of their job
 3 duties, plus interest, and costs of suit.; and,

4 G) The wages of all terminated employees in the CALIFORNIA LABOR
 5 SUB-CLASS as a penalty from the due date thereof at the same rate until
 6 paid or until an action therefore is commenced, in accordance with Cal.
 7 Lab. Code § 203.

8 3. On behalf of PLAINTIFF for the Tenth cause of action:

9 A) Compensatory damages, according to proof at trial, but in excess of
 10 \$25,000.

11 B) Special and General damages according to proof;

12 C) Statutory damages, penalties and attorney's fees;

13 D) For punitive damages in an amount necessary to make an example of and
 14 to punish DEFENDANT and deter DEFENDANT from engaging in future
 15 similar conduct;

16 E) For loss of earnings (both past and future); and,

17 F) For interest at the legal rate in an amount according to proof.

18 4. On behalf of the State of California and with respect to all AGGRIEVED
 19 EMPLOYEES:

20 A) Recovery of civil penalties as prescribed by the Labor Code Private
 21 Attorneys General Act of 2004.

22 5. On all claims:

23 A) An award of interest, including prejudgment interest at the legal rate;

24 B) Such other and further relief as the Court deems just and equitable; and,

25 C) An award of penalties, attorneys' fees and cost of suit, as allowable under
 26 the law, including, but not limited to, pursuant to Labor Code §221, §226,
 27 §1194, and/or §2802.
 28

1 Dated: January 10, 2024

BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

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3
4 By: /s/ Nicholas J. De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiff
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: January 10, 2024 BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP

By: /s/ Nicholas J. De Blouw
Nicholas J. De Blouw
Attorneys for Plaintiff